

STATE OF MICHIGAN
COURT OF APPEALS

OMAR SALEH,

Plaintiff-Appellee,

v

MICHIGAN ASSIGNED CLAIMS FACILITY,

Defendant-Appellant.

UNPUBLISHED

June 19, 2008

No. 274634

Wayne Circuit Court

LC No. 06-615614-NF

Before: Jansen, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant Michigan Assigned Claims Facility (ACF) appeals by leave granted from the trial court’s denial of summary disposition. Having thoroughly examined the issues upon which leave to appeal was granted, including the parties’ briefs and oral arguments, we conclude that leave to appeal was improvidently granted and remand this case to the trial court for further proceedings.

The issues as presented require this Court to determine whether the tolling provision in MCL 600.5851(1) is applicable to the statute of limitations provided in MCL 500.3174. However, no determination was made by the trial court as to whether any or all of plaintiff’s damages are barred by the one-year-back rule in MCL 500.3145(1).¹ See *Cameron v Auto Club Ins Ass’n*, 476 Mich 55, 63-64; 718 NW2d 784 (2006). Where a plaintiff’s damages claims are prohibited by the one-year-back rule, “it is immaterial whether § 5851(1), as amended by 1993 PA 78, tolls the limitation period for commencing an action contained in § 3145(1). . . . [because] that subsection cannot toll the one-year-back rule for the recovery of damages set forth in MCL 500.3145(1).” *Liptow v State Farm Mut Auto Ins Co*, 272 Mich App 544, 552; 726 NW2d 442 (2006).

In the present case, there is no evidence before us that indicates whether plaintiff incurred damages permitted by MCL 500.3107(1) and 500.3157 during the year prior to filing his

¹ Although this case involves MCL 500.3174, by its terms it implicates MCL 500.3145(1), making the application of *Cameron v Auto Club Ins Ass’n*, 476 Mich 55; 718 NW2d 784 (2006), and its progeny appropriate to this case.

complaint. While not binding on us, we find persuasive the holding of a panel of this Court in *Kennedy v State Farm Mut Auto Ins Co (On Remand)*, unpublished opinion per curium of the Court of Appeals, issued February 20, 2007 (Docket No. 259453), p 3, where, faced with similar circumstances, this Court stated: “Without the factual predicate established that plaintiff actually suffered identifiable damages during the year prior to the filing of [his] complaint, like *Cameron*, it would be ‘dicta for us to address the effect of MCL 600.5851(1) on the statute of limitations in MCL 500.3145(1),’ and therefore we decline to do so.” We believe that the same would be true of the effect of MCL 600.5851(1) on MCL 500.3174.

We therefore remand this case back to the trial court to determine whether plaintiff’s claim survives application of the one-year-back rule in MCL 500.3145(1). We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Peter D. O’Connell
/s/ Karen Fort Hood